

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Civil Minutes

Date: September 22, 2015

Judge: Jon S. Tigar

Time: 1 hour, 59 minutes

Case No. **3:11-cv-03003-JST**

Case Name **Michael Rodman v. Safeway Inc.**

Attorneys for Plaintiff: Steven A. Schwartz; Timothy N. Mathews; James C. Shah

Attorneys for Defendant: P. Craig Cardon; Anna S. McLean

Deputy Clerk: William Noble

Court Reporter: Rhonda Aquilina

PROCEEDINGS

- Final Pretrial Conference
- Safeway's Motion in Limine No. 1 to Exclude Evidence and Argument About the Alleged Promise of Price Parity; the Markup, the Amount of the Markup, Safeway's Disclosures About the Markup, and Any Other Evidence not Relevant to Whether Pre-2006 Registrants Entered Into an Enforceable Contract That Included the Relevant Provision (docket 333)
- Safeway's Motion in Limine No. 2 for an Order Excluding Cumulative Evidence of the Special Terms (docket 334)
- Safeway's Motion in Limine No. 4 for an Order Precluding Plaintiff From Suggesting That the Jury Draw an Improper Inference From the Unavailability of Evidence Regarding the 2001-2006 GroceryWorks Registration Process (docket 336)

RESULT OF HEARING

1. Reading of deposition transcripts during trial: Attorney will read question from podium and a different person will sit in witness box and read answers. Transcript is not to be displayed on a screen to the jury while being read.
2. Exhibits may be published to Jury after they are admitted into evidence. All exhibits must come in through a witness during the course of trial.
3. Objections must be short and not speaking objections. Either party may request a sidebar if further discussion is needed after the Court makes a ruling on the objection. The parties may use time at the beginning or end of the day to make a further record.

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4. Jury selection
 - a. A Jury of eight will be selected.
 - b. The Court will use a six-pack method to select jury. Eight jurors will be in the box with six outside. Court will hear hardship excuses first. Challenges for cause may be made to anyone in the box or six-pack. Peremptory challenges may only be made to one of eight jurors in the box. The box will be refilled in order from the six-pack.
5. Trial schedule:
 - a. Daily schedule is from 8:30 a.m. to 1:30 p.m. Trial is dark Fridays. The day of Jury Selection may run longer.
 - b. Attorneys should arrive by 8:00 a.m. to discuss any issues with the Court prior to the jury arriving.
 - c. Parties must first meet and confer prior to bringing any issue to the Court.
6. Time limits
 - a. Each side will have four hours.
 - b. Time is charged to party for opening statement, examining a witness in direct or cross examination, and closing argument.
7. Parties are coordinating set up of audio visual equipment.
8. Voir dire: Some voir dire will be conducted by Court. Each side will have 20 minutes to conduct voir dire. After the six-pack is refilled each side will be given an additional ten minutes.
9. Schedule for Defendant's motion to quash the subpoena of Josh Hemsley:
 - a. Motion due September 24, 2015
 - b. Response due September 29, 2015
 - c. Motion will be under submission without argument.
10. Correct amount of the pre-2006 refund: The Court set a telephonic case management conference for September 24, 2015 at 4:30 p.m. If the parties file a stipulation with proposed order, the Court will vacate the hearing.
11. By September 30, 2015 the parties will submit competing proposed instructions as to the contract claim or a stipulated joint instruction. Defendant will provide its proposed language to the Plaintiff by September 28, 2015
12. Rulings on Motions in Limine:
 - a. Under Submission - Safeway's Motion in Limine No. 1 (docket 333)
 - b. Denied - Safeway's Motion in Limine No. 2 (docket 334)
 - c. Denied without prejudice - Safeway's Motion in Limine No. 4 (docket 336)
13. Use of internet in courtroom to show jurors how wayback machine works: Any party seeking relief may file a motion.